

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

BRENDA SANDERS,

Appellant,

v.

DEPARTMENT OF LABOR AND
INDUSTRIES,

Respondent.

) Case No. DISM-00-0027

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and LEANA D. LAMB, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on May 31 and June 1, 2001. GERALD L. MORGEN, Vice Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Brenda Sanders appeared *pro se*. Mickey Newberry, Assistant Attorney General, represented Respondent Department of Labor and Industries.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, inefficiency, insubordination, gross misconduct and willful violation of published agency policy. Respondent alleges that Appellant failed to report to work as directed; use work time efficiently; complete her assignments as directed; assist internal and external customers in a

1 professional, courteous, timely and complete manner; treat her supervisor with respect and dignity;
2 and behave in a professional manner.

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4 1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084
5 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Anane v.
6 Human Rights Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-04019-2 (Thurston
7 Co. Super. Ct. Jan. 10, 1997); Countryman v. Dep't of Social & Health Services, PAB No. D94-025
8 (1995); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social
9 & Health Services, PAB No. D93-053 (1994); Aquino v. University of Washington, PAB No. D93-
10 163 (1995); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

11 12 **II. FINDINGS OF FACT**

13 2.1 Appellant Brenda Sanders was an Industrial Insurance Underwriter 3 and permanent
14 employee for Respondent Department of Labor and Industries in the Employer Services Division.
15 Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated
16 thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals
17 Board on April 12, 2000.

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19 2.2 By letter dated April 3, 2000, Doug Connell, Assistant Director of Industrial Insurance
20 Services, informed Appellant of her dismissal effective April 18, 2000. Mr. Connell charged
21 Appellant with neglect of duty, inefficiency, insubordination, gross misconduct and willful
22 violation of published employing agency or department of personnel rules or regulations. Mr.
23 Connell alleged that Appellant failed to report to work as directed; use her work time efficiently,
24 complete her work assignments as directed; assist internal and external clients in a professional,
25 courteous and timely manner; treat her supervisor with common respect and dignity; work
26 cooperatively with her supervisor to improve her work performance; meet the mission, goals, and

1 values of the department; and conduct herself in a professional manner. Mr. Conner further alleged
2 that Appellant violated the agency's policies on Ethical Standards for State Employees, Private Use
3 of State Resources, Vacation Leave and Holidays and Handling Assaults, Threats and Harassment.

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5 2.3 Appellant had been employed with the department for approximately six years at the time of
6 her termination. As an Industrial Insurance Underwriter 3, Appellant was responsible for managing
7 a workload of complex industrial insurance claims. Appellant worked with both internal and
8 external clients. Appellant was assigned to work on Team 7 and beginning in September 1999, she
9 was supervised by Industrial Insurance Underwriter 4, Eddie Cheung. Kathy Kimbel, Labor and
10 Industries Program Manager for Employee Services, was Appellant's second-line supervisor.

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12 2.4 On July 19, 1999, Mr. Cheung met with Appellant and counseled her regarding her frequent
13 tardiness and reminded her that arriving to work late and making up the time later was not
14 acceptable. On September 30, 1999, Mr. Cheung and Ms. Kimbel met with Appellant and provided
15 her with clarification regarding her job duties and responsibilities. On November 22, 1999, Mr.
16 Cheung met with Appellant to discuss work expectations. On November 15, 1999, Appellant
17 received an all staff e-mail which directed staff to arrive to work on time and to provide
18 professional, complete and timely service to internal and external customers. Appellant was aware
19 of the responsibilities of her job, the mission of the agency, her duty to follow her supervisor's
20 directives, and of her responsibility to adhere to her work schedule.

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22 2.5 Appellant received numerous memos and letters of reprimand concerning her attendance,
23 customer service skills, appropriate work behavior and work performance which included:

- 24
25 • August 12, 1999 written expectations directing her in part, to report to work at 8:00
26 a.m.; perform the full scope of her duties; provide full customer service to internal
and external customers; respect the opinions of others; contribute to creating and
maintaining a good work environment and act in a professional manner at all times;

- August 17, 1999, counseling memo from Mr. Cheung regarding her continued tardiness;
- August 18, 1999 letter of reprimand regarding her tardiness and directing her to notify her supervisor whenever tardy;
- September 28, 1999 counseling memo directing her to report to work on time; perform her full share of work responsibilities; work in a professional manner and provide full customer service to internal and external customers;
- October 15, 1999 counseling memo directing her to treat all customers with respect, provide good customer service and act in a professional manner including using a pleasant telephone voice; and communicate with coworker, customers and her supervisor in a positive and courteous manner;
- October 18, 1999 letter of reprimand directing her to provide good customer service to internal and external customers;
- November 16, 1999 counseling memo placing her on medical verification when she used sick leave, used vacation leave in lieu of sick leave or used leave without pay in lieu of sick leave;
- November 16, 1999, letter of reprimand regarding a customer service complaint regarding her failure to respond to a customer inquiry.

2.6 By letter dated January 21, 2000, Appellant was suspended for 15 days for neglect of duty, inefficiency, insubordination, gross misconduct and willful violation of agency policy for her failure to report to work as directed, carry out her supervisor's directives, provide professional, courteous and timely customer service, and her failure to work cooperatively with her co-workers. Appellant was absent from work from January 21 to February 7, 2000. Upon her return on February 8, 2000, Ms. Kimbel and Mr. Cheung met with Appellant and her union representative to outline a number of expectations. A written list of the expectations, dated February 8, 2000, was also provided to Appellant and directed her to:

- communicate and interact with others during work hours in a positive, courteous, respectful and professional manner;
- comply with direction and instruction in a positive and cooperative manner;
- use her work time efficiently, arrive to work at 8 a.m. and leave at 4:30 p.m.;
- request prior approval for annual leave pursuant to policy 3.50.

Attendance Issues

1 2.7 Between February 11 and March 2, 2000, Appellant arrived late to work or was late
2 returning from lunch on 12 occasions. Appellant failed to adhere to Administrative Policy 3.50,
3 Vacation Leave and Holidays, when she did not request or receive prior approval from her
4 supervisor for her late arrivals to work.

5
6 *Customer Service Issues*

7 2.8 On February 15, 2000, Appellant received a call from external customer Marilyn Walstead
8 who requested a certificate of compliance and a certificate of coverage. Appellant had a duty to
9 request a certificate of coverage for Ms. Walstead and to transfer her to the Compliance Division
10 for the compliance certificate. Instead, Appellant responded to Ms. Walstead, "I cannot help you,
11 letter of compliance is not my area to help you." Appellant failed to provide Ms. Walstead with any
12 assistance and Ms. Walstead was subsequently assisted by Mr Cheung instead.

13
14 2.9 On February 16, 2000, James Stoesser, a coworker, asked Appellant to move a claim that had
15 been assigned to the wrong account. However, Appellant failed to work in cooperation with and
16 provide Mr. Stoesser with assistance when she refused to reassign the claim.

17
18 *Supervisory issues/Failure to follow supervisory directives*

19 2.10 On February 16, 2000, Appellant sent Mr. Cheung an e-mail notifying him that "I believe
20 my personal safety is imminently threatened by the placement of garbage exposing me to unknown
21 microorganisms in my workstation." Mr. Cheung subsequently directed Appellant to complete an
22 incident report in compliance with Administrative Policy 9.03. This policy requires that employees
23 who feel threatened or harassed complete and forward to their supervisor an incident report within
24 24 hours. Appellant was to submit the incident report to Mr. Cheung by the close of business on
25 February 22, 2000. Contrary to Policy 9.03 and to Mr. Cheung's directive, Appellant did not
26 submit the report on February 22.

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2 2.11 On February 11, 24, 28, 29 and March 1, 2000, Appellant behaved in a rude, disrespectful,
3 uncooperative, and argumentative manner toward by Mr. Cheung when he approached her to
4 discuss work issues. Appellant engaged in behavior such as hanging up on Mr. Cheung during a
5 phone conversation, walking away, ignoring and refusing to communicate with or accept documents
6 from Mr. Cheung

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8 2.12 On February 28, 2000, Mr. Cheung directed Appellant to submit a leave slip by noon that
9 day for her late arrival that morning. Appellant did not submit the leave slip as directed.

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11 2.13 Mr. Cheung had given Appellant a previous directive not to slam the cupboards and drawers
12 in her work area because it disrupted her coworkers. On February 29 and March 1, 2000, Mr.
13 Cheung overheard loud noises of slamming cupboards coming from Appellant's cubicle. When Mr.
14 Cheung addressed the issue with Appellant, she became argumentative with him.

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16 2.14 On March 1, 2000, Mr. Cheung e-mailed Appellant a directive to complete 10 over-due
17 Master Business Applications by noon that day. Appellant read her e-mail at 11:10 a.m., and she
18 was unable to complete all the applications by the deadline. Based on the time Appellant accessed
19 the directive, we find that Respondent failed to prove that Appellant willfully refused to follow her
20 supervisor's directive.

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22 2.15 Mr. Cheung directed his staff to provide the oldest date of their correspondence and
23 occupational disease claims by March 1, 2000. However, Appellant did not provide the information
24 as directed.

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26 *Work performance issues*

1 2.16 Appellant's job responsibility required that she complete assigned occupational disease
2 claims within 30 days of receipt and to complete her assigned bundles within seven days. As of
3 February 28, 2000, Appellant had eight claims over 30 days old and two bundles over seven days
4 old.

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6 2.17 On February 15, 2000, Mr. Cheung e-mailed Appellant regarding appropriate penalty and
7 interest waiver procedures, including the necessity to purge the transactions after the waiver was
8 approved. As of March 2, however, Appellant had failed to properly purge the penalty and interest
9 waiver transaction on an account for which Mr. Cheung had previously approved a waiver.

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11 2.18 Stephen Smith, L&I Internal Investigations Manager for the Office of Human Resources
12 conducted an investigation of allegations made by Appellant that she was being, in part, subjected
13 to a hostile work environment. On March 22, 2000, Mr. Smith concluded that there was no
14 corroboration or evidence to indicate Appellant was being subjected to a hostile work environment
15 by her coworkers or any supervisor or manager.

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17 2.19 Doug Connell, Assistant Director, was Appellant's appointing authority. In determining the
18 level of discipline, Mr. Connell considered Appellant's past performance and behavior including
19 the 15-day suspension he imposed in January 2000. Mr. Connell believed he had sent Appellant a
20 strong warning that her behavior was inappropriate, however, it did not appear to him that the 15-
21 day suspension was effective because he noted no change in her behavior. Mr. Connell observed
22 that Appellant continued to engage in similar behavior when she returned to work from the
23 suspension. Mr. Connell considered Appellant's concerns that she was working in a hostile work
24 environment, however, there was no evidence to support her contentions. Mr. Connell ultimately
25 concluded that termination was appropriate based on Appellant's history of inappropriate behavior
26 and her failure to correct that behavior.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that the evidence and testimony presented support the charges in the termination letter. Respondent argues that management made reasonable efforts to work with Appellant and provided her with clear expectations regarding her attendance and acceptable work behavior and work performance. Respondent argues that under the circumstances of this case, the number of expectations provided to Appellant were reasonable based on her repeated pattern of inappropriate behavior, inadequate work performance and attendance issues. Respondent argues that management's efforts to bring Appellant's behavior into line with the expectations and mission of the agency were unsuccessful and despite a 15-day suspension for similar behavior, she continued to exhibit unacceptable behavior at work. Respondent argues that Appellant exhibited a pattern of tardiness, disrespectful behavior toward her supervisor and failed to provide adequate customer service. Respondent contends that under the circumstances, the appointing authority's decision to terminate Appellant should be affirmed.

3.2 Appellant argues that Respondent's effort to terminate her began in 1999 and was in retaliation for her complaints about a hostile and uncomfortable work environment. Appellant argues that prior to 1999, she had received positive evaluations and letters of commendations. Appellant contends that during her employment she was consistently exposed to hostile behavior and treatment that was designed to make her feel uncomfortable. Appellant argues that over years there were often issues of her workload being larger than that of her coworkers but that management failed to resolve the problem. Appellant argues that there were changes in work practices that she was required to implement which were based on the biased reports of her coworkers. Appellant contends that Mr. Cheung continued to give her more expectations and directives, but failed to provide her with additional help, time or resources to accomplish them.

Appellant asserts that her supervisor's expectations were not clearly spelled out and she was treated unfairly and felt isolated and unwanted in the workplace.

Appellant asserts Ms. Walstead must have misunderstood her and she contends that she referred Ms. Walstead to the compliance section. Appellant asserts that she listened to Mr. Stoesser and provided him with the appropriate information. Appellant denies that she was rude or argumentative toward her supervisor and denies that she hung up on him or that she slammed the cupboards in her workstation. Appellant denies that she refused to cooperate and work with Mr. Cheung and asserts that he violated an agreement that he stay three feet away from her whenever communicating with her.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

4.4 Inefficiency is the utilization of time and resources in an unproductive manner, the ineffective use of time and resources, the wasteful use of time, energy, or materials, or the lack of

1 effective operations as measured by a comparison of production with use of resources, using some
2 objective criteria. Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal*
3 *dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997).

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5 4.5 Insubordination is the refusal to comply with a lawful order or directive given by a superior
6 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.
7 Dep't of Social & Health Services, PAB No. D94-025 (1995).

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9 4.6 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
10 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

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12 4.7 Willful violation of published employing agency or institution or Personnel Resources
13 Board rules or regulations is established by facts showing the existence and publication of the rules
14 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
15 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

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17 4.8 Although it is not appropriate to initiate discipline based on prior formal and informal
18 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the
19 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.
20 D93-163 (1995).

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22 4.9 Respondent has proven by a preponderance of the credible evidence and testimony that
23 Appellant neglected her duty, was inefficient in the use of her work time, was insubordinate, and
24 violated agency policies regarding leave and reporting harassment. Respondent has provided
25 credible evidence of Appellant's failure to provide professional and courteous customer service and
26 of her refusal to comply with the directives of supervisors. Additionally, Appellant neglected her

1 duty to treat her supervisor with respect and dignity. Appellant's failure to provide professional
2 customer service negatively affected the agency's ability to ensure that claims were handled
3 appropriately and damaged the credibility of the agency. Therefore, her misconduct rises to the
4 level of gross misconduct.

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6 4.10 In determining whether a sanction imposed is appropriate, consideration must be given to
7 the facts and circumstances, including the seriousness and circumstances of the offenses. The
8 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to
9 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the
10 program. An action does not necessarily fail if one cause is not sustained unless the entire action
11 depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

12
13 4.11 Although Respondent did not prove that Appellant violated the agency's policies on ethics
14 and private use of state resources, Respondent has met its burden of supporting the remaining
15 charges and proving that termination is appropriate under the facts and circumstances. Therefore,
16 the disciplinary sanction of dismissal should be affirmed.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Brenda Sanders is denied.

DATED this _____ day of _____, 2001.

WASHINGTON STATE PERSONNEL APPEALS BOARD

Walter T. Hubbard, Chair

Leana D. Lamb, Member